



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No. : HOha14090718
HUD No.: 05-14-1532-8

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,
v.

DEBRA WERNKE/
HUNTER'S RIDGE APARTMENTS
Respondent.

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following finding with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On September 15, 2014, [REDACTED] ("Complainant") filed a Complaint with the Commission against Debra Wernke and Hunter's Ridge Apartments ("Respondent") alleging unlawful discriminatory housing practices on the basis of disability in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*), the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*), and the Federal Fair Housing Act (42 U.S.C. § 3601 *et seq.*) The Commission, therefore, has jurisdiction over the parties and the subject matter of this Complaint.

A Commission investigation has been completed. All parties have been interviewed and have had an opportunity to submit evidence. Based on the final investigative report and a full review of the relevant files and records, the Executive Director now finds the following:

There are two issues before the Commission. The first issue is whether Respondent subjected Complainant to discriminatory terms and conditions. In order to prevail, Complainant must show that 1) he is a member of a protected class; 2) he was qualified, ready, willing, and able to rent in a manner consistent with Respondent's reasonable terms and conditions; 3) he applied to rent a unit from Respondent; 4) he was subjected to different terms and conditions; and 5) Respondent treated similarly-situated tenants without disabilities more favorably under similar circumstances.



By way of background and at all times relevant to the Complaint, Hunter's Ridge Apartments maintained a pet free community. In August 2014, Complainant, an individual with a vision impairment and mobility restrictions, completed and submitted a rental application for Respondent. Shortly thereafter, on or about September 2, 2014, Complainant received a telephone call informing him that the application had been approved and that he would need to come in to review and sign the rental agreement. On or about September 4, 2014, Complainant, his two brothers, and Complainant's service animal returned to the leasing office to discuss the lease, obtain the keys, and tender the first month's deposit; however, during the visit, Debra Wernke ("Wernke,") Respondent's co-owner advised that she was unaware Complainant had a service dog and began inquiring how Complainant would take care of and clean up after his service animal. After Complainant advised that he would not be able to clean up after the service animal because of his disability, Complainant asserts and Wernke admits that she stated that "maybe you'd be able to smell it." All parties admit that Wernke called Respondent's attorneys during the course of the visit and inquired about Complainant's obligations regarding the service animal. Moreover, there is conflicting evidence as to whether Complainant requested a refund of his security deposit; however, Respondent admits that it tendered Complainant a letter indicating that it would hold the apartment open for one week so Complainant could "arrange to be trained or receive training for cleaning up after his service animal."

Despite Respondent's assertions, there is sufficient evidence to believe that Respondent violated the laws as alleged. While it is clear that it is Complainant's responsibility to clean up and care for his service animal, no evidence has been provided by Respondent to show that it routinely requires other tenants to receive training before renting from Respondent. As such and based upon the aforementioned, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

The second issue before the Commission is whether Respondent denied Complainant's request for a reasonable accommodation. In order to prevail, Complainant must show that 1) he has a disability as defined under the law; 2) Respondent knew or should have known of Complainant's disability; 3) Complainant made a request for a reasonable accommodation necessary to afford him the opportunity to enjoy the premises; and 4) Respondent refused Complainant's request for a reasonable accommodation. Again, Respondent violated the applicable laws as alleged. While it is evident that Complainant has disabilities as defined under the law and obvious that Respondent knew of Complainant's vision impairment, there is sufficient evidence to believe that Complainant made a request for a reasonable accommodation. Specifically, once Complainant informed Respondent that he was unable to pick up after the dog, Respondent tendered Complainant a letter indicating that it would hold open the apartment until Complainant obtained training rather than engage in the interactive dialogue process. It is evident that Complainant has a duty to clean up after and care for his service animal; however, no evidence has been provided or submitted to show that Respondent engaged in the interactive dialogue process with Complainant to discuss alternatives that would allow Complainant to reside in the apartment of his choice. Rather, Respondent effectively

denied Complainant's request by requiring Complainant to obtain specialized training related to his service animal prior to being permitted to move in. As such and based upon the aforementioned, there is no reasonable cause to believe that a violation of the law occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondent, Complainant, or another aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondent, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, Respondents shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. [REDACTED] and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If, at any time following service of this charge, Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

January 29, 2015

Date

Jamal L. Smith
Executive Director
Indiana Civil Rights Commission